

**TO:** Zoning Board of Adjustment  
**FROM:** Community Development Department  
**DATE:** April 21, 2015

**RE:** **CASE #BA-15-002**

**REQUEST:** Variance from Section 15.24.040(03)(a) Fence Regulations of the Council Bluffs Municipal Code (Zoning Ordinance) to allow a six foot-tall chain-link fence in the front and street side yard setback areas in an C-2/Commercial District and a variance from Section 15.24.040(04), Required Fences, of the Council Bluffs Municipal Code (Zoning Ordinance) to allow a six foot-tall chain-link fence with vinyl inserts as opposed to the required solid wood, vinyl, vegetation and/or combination thereof to screen the commercial operation from an adjacent residential use/district.

**APPLICABLE**

**CODE SECTIONS:** **§15.24.040(03)(a) Fence Regulations – General Requirements for Residential and Commercial Districts**

(a) In a front yard or a street side yard, the height of a fence shall not exceed 4 feet, unless its placement meets the setback requirements for principle and accessory structures. Exceptions: Ornamental iron fences located in front or street side yards may exceed four foot in height, but are limited to six feet overall height.

**§15.24.040(04) Supplemental Use and Site Development Regulations**  
**Required Fences**

- (a) A fence shall be required where any conforming commercial or industrial use abuts a residential district. The fence shall be provided at the abutting side and rear property lines. A fence shall be required for any open storage area in an industrial district which blocks all view of the storage area at or beyond the property line. The fence shall be provided by one of the following methods:
- (i) A wood and/or masonry fence, at least fifty (50) percent opaque, six feet in height.
  - (ii) A vegetation fence capable of providing a substantially opaque barrier and attaining a height of six feet within three years of planting.
  - (iii) A landscaped earth berm with a maximum slope of three to one vertical/horizontal, no more than six feet above the existing grade of the property line separating the zoning districts; or
  - (iv) Any combination of the described methods that achieves a cumulative height of six feet.

**RELIEF SOUGHT:**

- A variance to allow a six-foot tall chain-link fence in a required C-2/Commercial District front and street yard area as opposed to the maximum height of four feet.
- A variance to allow a chain-link fence with vinyl inserts as opposed to the required screening requirements for a storage yard adjacent to a residential use.

**LEGAL**

**DESCRIPTION:** Lot 16 and part of Lots 17 and 18, Glengary Addition, lying west of ditch, except highway right-of-way.

**APPLICANT:** John Williams, Perimeter Fence, 4626 North 94<sup>th</sup> Street, Omaha, NE 68134

**OWNER:** SCG, LLC, 2606 Railroad Highway, Council Bluffs, Iowa 51503

---

**BACKGROUND INFORMATION** – The property owner, SCG, LLC (Sheeder Construction Group), is a private contracting firm that assist gas utility companies maintain and expand their pipeline infrastructure. They currently operate a legal non-conforming contractor ‘storage yard’ at 2606 Railroad Highway, Council Bluffs, Iowa and are in the process of trying to expand their business operation to the subject property 2614 Railroad Highway, as legally described above. The property owner proposes to demolish the existing building and construct a 180’ x 80’ (14,400 square feet) ‘contractor shop’ on the subject property for indoor

## Staff Report

storage of their commercial equipment. As part the site development plans, the property owner proposes to install a six foot-tall chain-link privacy fence with vinyl inserts along the north, east and south property boundaries. The applicant, John Williams d/b/a Perimeter Fence, was hired to install said fence and is requesting the above stated variances on behalf of the property owner. The applicant claims the variances are necessary for security, long-term maintenance and screening the commercial property from public view.

The following attachments are included with this report for reference purposes:

Attachment A: Statement of use

Attachment B: Fencing plan provided by applicant

Attachment C: Zoning/location map

Attachment D: Flood map

**CURRENT ZONING AND LAND USE** – The subject property is zoned C-2/Commercial District contract zoning. The property owner has submitted an application to repeal the C-2 District contract zoning and rezone the property C-2/commercial District to allow the property ‘contractor shop’ on the property (see Case #ZC-15-005). Surrounding zoning includes R-1/Single-Family Residential District to the north and east and C-2/Commercial District to the west and south. Surrounding land uses includes commercial storage and a non-conforming ‘contractor yard’ to the west with Midwest Equipment sales and automobile sales to the south. Single family residential dwellings are located immediately east and north of the subject property. The Future Land Use Plan in the Bluffs Tomorrow 2030 Comprehensive Plan designates the subject property as Local Commercial.

The subject property contains 1.69 acres of land which exceeds the minimum 5,000 square foot lot size requirement in a C-2/Commercial District. The property is generally flat and rectangular in shape with no significant topographical impediments. The property is considered a ‘double frontage’ lot as it has equal amounts of road frontage along Railroad Highway and Slightam Avenue. For zoning purposes, one of the street frontages is considered a front yard and the opposite frontage a street side yard. In a C-2/Commercial District the required front yard is 15 feet and the street side yard is 10 feet. Per §15.24.040(03)(a) *Fence Regulations* of the Council Bluffs Municipal Code (Zoning Ordinance) a proposed privacy fence cannot exceed four feet in height when placed within a required C-2 District front or street side yard. The following images below are of the subject property and the surrounding area taken by the Community Development Department.



**Exhibit A:** View of subject property from Railroad Highway.





**Exhibit B:** View of commercial business to south (across Railroad Highway).



**Exhibit C:** View of the residential property to immediate east of the subject property.



**Exhibit D:** View of residential property to the north of the subject property.



**Exhibit E:** View of north side of the subject property (abutting public frontage road onto Perry Road).



**Exhibit F:** View of an existing commercial storage facility and contractor's yard to the abutting west.

**CITY DEPARTMENTS AND UTILITIES** – Variance requests are provided to each City Department and utility provider for comment. The following responses have been received:

**Council Bluffs Building Division:** The property is located within two special flood zone areas (AE & 0.2 percent) as per FEMA Flood Panel Map No. 19155C0420F, revised April 16, 2013. The property is not located within a floodway. The Building Division has no issues with the proposed variance request as the fence is not considered a structure and the property is not located within a floodway.

**Council Bluffs Public Works Department:** No comments regarding the proposed variances as long as the fence is installed on private property and not within the public right-of-way.

**Council Bluffs Water Works:** No comments regarding the proposed variance. Council Bluffs Water Works has made the applicant aware that an existing private water line for property at 2617 Perry Road runs through the subject property and must be relocated prior to constructing the proposed 'contractor shop'.

**Mid-America Energy Company:** No issues/concerns regarding the proposed variances.



**NEIGHBORHOOD RESPONSE** – It is required by Ordinance that all property owners within 200 feet be notified of a requests for variances. The following public comments were received:

- Norma Tradel, 2646 Railroad Highway, stated she has concerns with potential stormwater run-off and flooding to her property as a result of the new contractor shop building.

#### **COMMENTS**

1. The applicant must show evidence of an unnecessary hardship, where the regulation decreases or destroys the value of the property. Following in italics are the findings the Board must use to issue a variance. Staff comments follow each finding in underline text. §15.02.080E.- Zoning Board of Adjustment – Variances - Findings of Fact, clearly states that ‘No variance from the provisions of this Ordinance shall be granted unless the Zoning Board of Adjustment makes findings of fact based directly on the standards and conditions imposed by this section’.

*(1) The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this ordinance which disadvantage does not apply to the other properties in the vicinity. The subject property contains 1.69 acres of land which exceeds the minimum 5,000 square feet lot size required in a C-2/Commercial District. The property is generally flat and rectangular shape with no significant physical impediments. The property is located within two special flood zones (AE and 0.2 percent); however said flood zones have no impact on the style, height or placement of fence on the subject property. The topographical layout, size and shape of the subject property are generally consistent with other commercial properties in the surrounding area.*

*(2) Because of this disadvantage, the owner is unable to make reasonable use of the affected property. No disadvantage exists on the subject property. The owner will not be denied reasonable use of the property if the variance requests are denied. The property contains no physical or topographical impediments that would prevent the owner from installing a privacy fence that complies with Sections §15.24.040(03)(a) and §15.24.040(04) of the Council Bluffs Municipal Code (Zoning Ordinance. The proposed fence style, height and placement on the subject property are a design preference by the owner and not a hardship with the property.*

*(3) The disadvantage does not exist because of conditions created by the owner or previous owners of the property. The need for a variance is the result of a design preference by the owner and not a disadvantage created by a previous owner. The subject property is relatively flat with no topographical or physical impediments.*

*(4) Granting the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. Granting the variance will confer special privileges to the property owner not granted to other commercial or residential property owners. The maximum fence height in a required front or street side yard in a commercial or residential zoning district is four feet. The subject property has no physical hardship that necessitates the proposed six foot-tall fence be placed within a required front or street side yard. The owner could locate the six-foot tall fence outside of the required setback areas to screen and provide security for the subject property. The proposed chain-link fence with vinyl inserts is a design preference and has no basis for approval based on a hardship with the property.*

*(5) Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity and will be in harmony with the intent and purpose of this ordinance. Granting the variance will not be in harmony with the intent and purpose of the ordinance. The variance is being requested not because use of the property is destroyed by the regulation, but because of a design preference by the current property owner.*


2. If the Board finds that the applicant has a hardship specifically related to the property then a variance should be granted based on findings. If the Board finds that the request is the result of a preference and not a hardship then a variance shall not be granted. In order for the Board to grant a variance, findings of a hardship as discussed above, must be stated.

**RECOMMENDATION**

The Community Development Department recommends denial of the requested fence variances at 2614 Railroad Highway, legally described as Lot 16 and part of Lots 17 and 18, Glengary Addition, lying west of ditch, except highway right-of-way Pavich Drive, based on reasons cited above.



Rose Brown  
Planning Coordinator



Christopher N. Gibbons  
Planner

## Statement of Use

We are applying to build a contractor shop. The hours of use will be: 7am - 5pm. The maximum number of people working at this location will be 6 people. There will be access from Perry Rd and Hwy 191 through existing driveways. There will be lighting on front of building and parking will be at the adjacent property located at 2606 Railroad Hwy.



Proposed fence type for property boundary







# CITY OF COUNCIL BLUFFS - ZONING BOARD OF ADJUSTMENT ZONING/LOCATION MAP CASE #BA-15-002

**Map Legend**

CASE #BA-15-002 Subject Property

Parcel

Address



2013 Aerial Photograph



Note: Subject property highlighted in white.

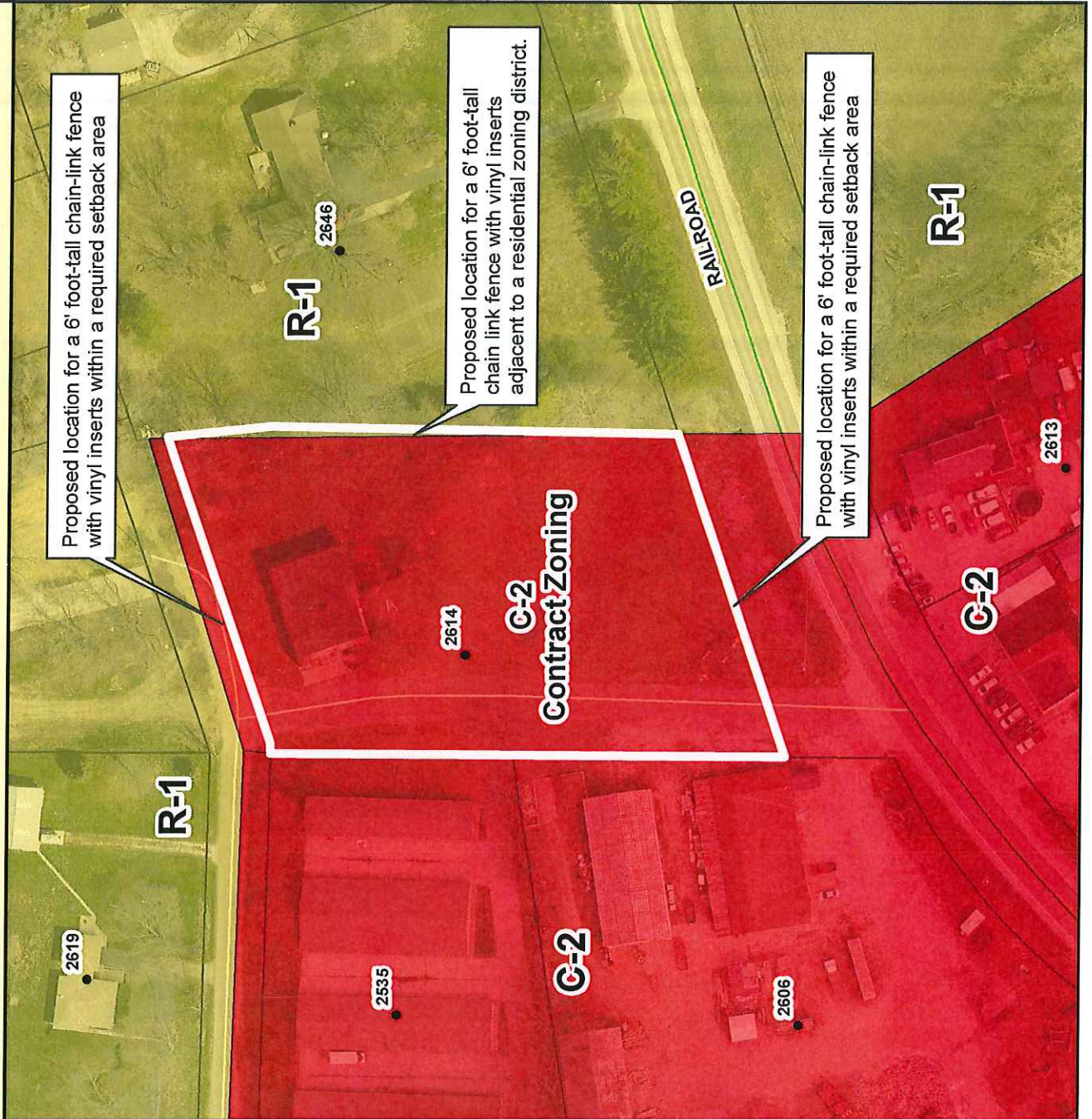


Last Amended: 3/26/15

Council Bluffs Community  
Development Department  
209 Pearl Street  
Council Bluffs, IA 51503  
Telephone: (712) 328.4629



**DISCLAIMER**  
This map is prepared for informational purposes only. It is not intended to be used as a legal document. The City of Council Bluffs is not responsible for any errors or omissions in this map. The City of Council Bluffs is not responsible for any damages or losses resulting from the use of this map. The City of Council Bluffs is not responsible for any claims or liabilities arising from the use of this map. The City of Council Bluffs is not responsible for any claims or liabilities arising from the use of this map.





# Case #BA-15-002 Flood Map



Porterham County GIS

223 S. 4th St.

Council Bluffs, IA 51501

(712) 328-4885

gis@portcounty.com

http://gis.portcounty.com

Map Published: 4/13/2015



Porterham County makes no representation as to the accuracy of this map and its information nor its fitness for use. Any user of this map assumes all liability for any and all damages, loss, or liability arising from any use of this map.



1 in = 94 ft

